

MAR 3 1956

HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, [REDACTED] 1961

No. [REDACTED] ORIGINAL

8

STATE OF ARIZONA, *Complainant*,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, *Defendants*.

UNITED STATES OF AMERICA, *Intervener*.

STATE OF NEVADA, *Intervener*.

APPEARANCE AND STATEMENT
IN BEHALF OF NEW MEXICO OF
ITS CLAIM OF INTEREST IN
AND TO LOWER BASIN WATERS

RICHARD H. ROBINSON
*Attorney General of
New Mexico*

FRED E. WILSON
*Special Assistant
Attorney General*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 10 ORIGINAL

STATE OF ARIZONA, *Complainant*,

vs.

STATE OF CALIFORNIA, et al., *Defendants*.

APPEARANCE AND STATEMENT
IN BEHALF OF NEW MEXICO OF
ITS CLAIM OF INTEREST IN
AND TO LOWER BASIN WATERS

I.

Pursuant to the Order of the Supreme Court dated December 12, 1955, New Mexico enters its appearance herein as a party, solely in its capacity as one of the Lower Basin States as defined in the Colorado River Compact of 1922.

II.

Its appearance is made by authority of its Attorney General, concurred in by its Governor and the New Mexico Interstate Stream Commission. The Interstate Stream Commission is an agency of the state, created by the legislature with power to protect, conserve, and develop the waters and stream systems of the state, including the power to institute in the name of the State of New Mexico any and all legal proceedings as in its judgment are necessary to carry out its duties and powers.

III.

New Mexico as a sovereign state is a party to the Colorado River Compact dated November 24, 1922, and one of the states of the Lower Basin, as defined in Article II (g) and Articles III (a) and III (b) of said compact, and is entitled to its share of the beneficial consumptive use of the waters allocated to the Lower Basin by said compact.

IV.

The various statements as to geographical and historical background of the Colorado River system, and the various documents referred to as constituting the "Law of the River" made by the parties and intervenors herein are sufficiently accurate and complete for the use of the Court in determining the issues herein. Therefore, no formal admissions or denials by New Mexico in reference thereto are deemed necessary.

The documents referred to as constituting the "Law of the River" are as follows:

1. The Colorado River Compact of 1922 (Exhibit A, Arizona Complaint).
2. The Boulder Canyon Project Act of May 28, 1928 (45 Stat. 1057; Appendix 2, Calif. Answer).
3. California Limitation Act.
4. Various contracts with the United States for delivery of water from Lake Meade.
5. The Treaty with the Republic of Mexico.

V.

New Mexico does not have sufficient information or knowledge to form a belief as to the legal justification for the claims made by Arizona, California, and Nevada to the use

of specific quantities of water allocated by the Colorado River Compact of 1922 to the Lower Basin States, and therefore, denies that said states are entitled to the quantities claimed in their pleadings. Alleges that all claims made by each of the three states of the Lower Division (Arizona, California, and Nevada), are subject to the interests of New Mexico and Utah to be determined by this Court in this proceeding, based upon the terms of the Colorado River Compact. Alleges that since the signing of the Colorado River Compact at Santa Fe, New Mexico, November 24, 1922, by all seven states of the Colorado River Basin, nothing has transpired or occurred to lessen or destroy the legal right of New Mexico to have determined and apportioned to it, as a sovereign state, by this Court a fair, equitable and reasonable share of the apportionment made by the compact to the states of the Lower Basin, as well as its right to future apportionments to be made under the provisions of the compact. New Mexico recognizes that by Article VII of the Compact nothing in the Compact shall be construed as affecting the obligations of the United States of America to Indian Tribes. Alleges that there is no controversy between New Mexico and the United States either as guardian of the Indians or otherwise, relative to their respective rights to the use of the water allocated by the compact to the Lower Basin states.

VI.

New Mexico further states:

1. It admits, as alleged by all the parties hereto including intervenors, that the Colorado River Compact did not apportion to the individual states of the Lower Basin the right to the beneficial consumptive use of any specific quantity of water, but contemplated that such apportionment to each state of the Lower Basin should be made by compact or

negotiation; that because of the long standing controversy between Arizona and California, which has existed since 1922, no such division or apportionment has been made.

2. Due to its geographical position among the states of the Lower Basin, New Mexico cannot under present conceptions of economics and feasibility obtain any water from the main stem of the Colorado or through contracts with the United States from Lake Meade; its only source of supply is from the Gila and Little Colorado River basins, both of which rivers, or their tributaries, rise in New Mexico and flow into and across portions of Arizona and empty into the Colorado River below Lee Ferry.

3. That any apportionment made by decree of this Court which will be of any practical benefit to New Mexico must come from the natural stream flow of the Gila and Little Colorado Rivers and their tributaries within the boundaries of the State of New Mexico; Arizona is in a position geographically to make use of main stem water of the Colorado River and water impounded in Lake Meade, and is the only state other than New Mexico which is in any position geographically to make use of Gila River waters. (By paragraphs 13, 17, and 29 of the Arizona complaint claim is made only to the right to the use of Gila River waters within the boundaries of the State of Arizona.)

VII.

At the present time the irrigated acreage in New Mexico making beneficial and ample use of Colorado River water is approximately 20,900 acres, including Indian and non-Indian uses, 9,500 acres of which are within the basin of the Little Colorado River and 11,400 acres within the Gila River basin within the State of New Mexico. Plans are being made for the irrigation of approximately 7,000 acres of additional land in the two basins (Indian and non-Indian),

and there are at least 50,000 acres of additional land that could be irrigated if a water supply were available. In addition to the foregoing, there is need for at least 50,000 acre-feet of water for municipal and industrial purposes in the region. The area involved includes McKinley, Valencia, Catron, Hidalgo, and Grant Counties which have extensive mining operations including oil, gas, uranium, copper, and other minerals; that New Mexico has been prevented from making beneficial use of greater quantities of water because of the long-standing controversy between Arizona and California, the uncertainty of the extent of its interest in the allocations made to the Lower Basin (Articles III (a) and III (b) of the Colorado River Compact), and from the lack of storage facilities. The natural flow of the Gila River and its tributaries and the Little Colorado and its tributaries, which at the New Mexico-Arizona boundary is on the average of approximately 275,600 acre-feet, varies greatly and does not conform to the seasonal demand of actual requirements. In most years the total annual flow is adequate to meet the present needs of the area in New Mexico if necessary storage facilities are constructed. However, the greater part of the annual flow occurs in the winter when the irrigation demand is less. When the demand is greatest in the summer the stream flow is deficient and many areas experience seasonal water shortages. Due to the erratic flow of the river and the lack of regulatory storage, considerable damage is done by floods to the lands presently in cultivation.

VIII.

New Mexico claims that her legal interest in and to the waters apportioned by the Colorado River Compact to the Lower Basin states should be determined by the Court to be as follows: In order to enable New Mexico to make beneficial consumptive use within the state of a portion of

the waters apportioned in perpetuity to the Lower Basin states by the Colorado River Compact (Articles III (a) and III (b), signed at Santa Fe, New Mexico, November 24, 1922, New Mexico shall have free and unrestricted use of all waters originating within the drainage basins of the Gila River and its tributaries, the Little Colorado River and its tributaries, within the boundaries of the State of New Mexico, with the right to divert, store and beneficially consume the same. All existing rights within the state to the use of all such waters for any beneficial purpose shall be protected and remain unimpaired (See New Mexico Constitution, Article XVI). In addition to the foregoing, New Mexico shall retain its right to participate in any further apportionment in conformity with the Colorado River Compact.

IX.

The above apportionment should be made to New Mexico as a sovereign state, regardless of whether the Court determines that Arizona is entitled to the claims made by her to the use of Gila River waters within the boundaries of Arizona, or whether California prevails in establishing her claim, and without regard to what the determination is as to the other issues relating to the method of measuring beneficial consumptive use, evaporation losses, and whether III (b) water refers exclusively to the Gila River or not. New Mexico alleges that the apportionments made in the final decree to each of the states of the Lower Basin under the doctrine of *Hinderlider vs. La Plata* (304 U. S. 92) will become public waters of the individual state for the benefit of the individual water users within the boundaries of each state; that under the doctrine of said case, and of *Nebraska vs. Wyoming* (325 U. S. 589, 627), the relative rights of individual water users within each state as to priorities

and uses should be determined in accordance with the laws of each respective state and satisfied from the total quantity of water apportioned by the final decree to each state.

X.

With respect to certain legal questions involved primarily in the issues made by the pleadings between Arizona and California, the State of New Mexico alleges:

1. That the above questions are

- (a) Is the State of Arizona a party to the Colorado River Compact?
- (b) How is beneficial consumptive use under the compact to be measured?
- (c) How shall evaporation losses from the Lower Basin reservoirs be charged?
- (d) Is the water referred to in Article III (b) of the compact apportioned or unapportioned water?

2. That however the issues among the other parties here-to are determined by the final decree herein, New Mexico has the right to the beneficial consumptive use of a sufficient quantity of water per annum to supply any rights which existed in 1922 or which may now exist within the state, and to satisfy the future uses set forth in paragraph VII hereof.

3. While the right of New Mexico to have apportioned to it as a sovereign state, by the decree of this Court, its share of the use of the waters allocated by Article III (a) and Article III (b) of the compact is unaffected by a determination of the foregoing issues primarily between Arizona and California, New Mexico alleges that it believes the true meaning and intent of the compact in reference to said questions is as follows:

- (1) The State of Arizona is a party to the Colorado River Compact.

- (2) Beneficial consumptive use, as used in Articles III (a) and III.(b) of the compact, should be measured in terms of stream depletion; that the compact contains no definition of beneficial consumptive use, nor does it define how such beneficial consumptive use shall be measured.
- (3) As heretofore alleged, New Mexico is not in a position geographically to use any water from reservoirs presently in existence in the Lower Basin; that a reasonable interpretation of the compact would be that losses of water in and from reservoirs located in the Lower Basin of the Colorado River should be charged against the apportionment to those states which use water from said reservoirs, in the same proportion as the consumptive use of water in the state against which the charge is made currently bears to the total consumptive use of water in the Lower Basin made by states using water from reservoirs in the lower basin of the Colorado River.
- (4) The water referred to in Article III (b) of the Colorado River Compact is apportioned water, and is included within the 8,500,000 acre-feet of beneficial consumptive use per annum for the benefit of and apportioned to all of the states of the Lower Basin.

WHEREFORE, the State of New Mexico prays:

1. That the respective rights of the States of California, Arizona, Nevada, Utah, and New Mexico, and the United States of America, in and to the beneficial consumptive use of the waters of the Colorado River in the Lower Basin included and referred to by Articles III (a), III (b), and III (f) of the compact, be adjudicated and determined in terms of acre-feet, or based upon a percentage of the total amount available.
2. That the right of the state of New Mexico in and to the annual beneficial consumptive use of waters of the Colo-

rado River below Lee Ferry, be determined to be that portion of the allocation to the Lower Basin States allocated by Articles III (a) and III (b) of the Colorado River Compact equal to the amount of such waters originating within the boundaries of the State of New Mexico, in terms of acre-feet, or in terms of the percentage that such water so originating within the boundaries of the state bears to the total amount allocated to the Lower Basin states annually and available for beneficial consumptive use.

3. That the State of New Mexico be decreed to have the right to its share in and to the beneficial consumptive use of waters which may be apportioned under Article III (f) of the Colorado River Compact, in accordance with its terms.

4. That the State of New Mexico be granted such other and further relief as to the Court may seem proper; that the State of New Mexico be granted leave to amend and supplement this pleading as its interest may appear.

.....
RICHARD H. ROBINSON
Attorney General of New Mexico

.....
FRED E. WILSON
*Special Assistant Attorney
General of New Mexico*

APPROVED:

.....
Governor of the State of New Mexico

INTERSTATE STREAM COMMISSION

By:
Chairman